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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,251	05/25/2001	Thomas E. Chefalas	YOR920010343US1	4579
35526	7590	04/05/2004	EXAMINER	
DUKE. W. YEE CARSTENS, YEE & CAHOON, L.L.P. P.O. BOX 802334 DALLAS, TX 75380			CHANNAVAJJALA, SRIRAMA T	
			ART UNIT	PAPER NUMBER
			2177	3
DATE MAILED: 04/05/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/866,251

Applicant(s)

CHEFALAS ET AL.

Examiner

Srirama Channavajjala

Art Unit

2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2001.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-61 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings filed on 5/25/2001 are approved by the Draftsperson under 37 CFR 1.84 or 1.152.

Specification

2. At page 1, the cross-reference to related applications Serial no. are missing, applicant is required to provide application Serial numbers and their updating status in response to this office action, paper no. # 3.

Information Disclosure Statement

3. The information disclosure statement filed on 3/11/2004, paper no. # 2 comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609, and considered, a copy of PTO-1449 is hereby enclosed with this office action, paper no. # 3.

4. At page 14, line 25-26, page 15, line 1-2, the listing of references in the specification is not a proper information disclosure statement. Applicant is hereby required to submit the listed items above in the PTO-1449 in response to this office action, paper no. # 3.

As noted in the office action that 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1- 61 are rejected under 35 U.S.C. 102(e) as being anticipated by Dunham et al., [hereafter Dunham], US Patent No. 6714952.

6. As to Claims 1, 11, 17, 24, 30, 40, 46, 56, Dunham teaches a system which including 'data processing system for backing up data' [see Abstract], Dunham is directed to backup and restore of network file server, more specifically backup and restoration of data files that are associated with application programs [see Abstract], 'responsive to a request to backup data associated with an application' [col 2, line 46-51], responsive to

a request to backup data associated with an application corresponds to performing data backup operations that are associated with the data and respective application as detailed in col 2, line 46-51; 'querying a data store containing meta data regarding files associated with the application' [col 2, line 39-43, col 3, line 7-17, col 5, line 63-67, col 6, line 1-11, col 7, line 30-38]; 'data store includes meta data describing the files accessed by the application' [col 5, line 21-25, col 6, line 50-56, col 7, line 11-15, fig 1-2], Dunham specifically teaches metadata server associated with file(s) data and their respective attributes as detailed in fig 2-3, col 7, line 11-15; 'receiving a result in response to querying the data store' [col 7, line 39-49, line 58-60], Duham teaches particularly file system residing file servers executing specific instructions, which file system to be accessed; 'backing up the files identified in the result to a storage system' [col 8, line 1-6],

Furthermore, Duham also teaches the limitation of Claims 11,24,40,56 'copying of the files to a backup location' [col 2, line 48-51, col 8, line 1-3], transferring data and metadata to the backup storage location corresponds to copying of the file to a backup location as detailed in col 8, line 1-3, fig 4.

7. As to Claims 2,12,18,25,31,41,47,57,Dunham teaches a system which including 'files are backed up using a standard backup program' [col 3,line 7-8, col 4, line 45-46], Dunham specifically directed to use various file systems such as CIFS or common internet file systems, NFS file systems,NT and UNIX file systems as detailed in col 4 line 31-33, line 45-46, as best understood by the examiner at minimum UNIX is file

system supports popular backup programs such as “dump and Restore”, more specifically, dump, tar, cpio, therefore, standard backup programs are integral part of Dunham's teaching.

8. As to Claims 3,19,32,48, Dunham teaches a system which including ‘data store is one of a database and a text file’ [col 5, line 38-47, fig 1-2].

9. As to Claims 4,20,33,49, Dunham teaches a system which including ‘data is located on a source data processing system and the storage system is located on a destination data processing system’ [fig 1, col 2, line 46-51].

10. As to Claims 5,21,34,50, Dunham teaches a system which including ‘data processing system is the source data processing system’ [col 2, line 57-59, fig 1].

11. As to Claims 6,22,35,51, Dunham teaches a system which including ‘data processing system is the destination data processing system’ [col 2, line 61-64, fig 1].

12. As to Claims 7,36,52, Dunham teaches a system which including ‘backing up step are performed by a backup process’ [col 3, line 21-23].

13. As to Claims 8,37,53, Dunham teaches a system which including ‘backup process is located on the data processing system’ [col 3, line 2-7, line 21-23, line 29-32].

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14. As to Claims 9,13,26,38,42,54,58, Dunham teaches a system which including 'backup process is located on a data processing system with the storage system' [col 3, line 2-7].

15. As to Claims 10,14,23,27,39,43,55,59, Dunham teaches a system which including 'at least one of a hard disk drive, a tape drive and a rewrite able compact disk drive' [col 5, line 21-25].

16. As to Claims 15,28,44,60, Dunham teaches a system which including 'storage system connected to the data processing system through a network' [fig 1, col 3, line 15-21,line 6-8]

17. As to Claims 16,29,45,61, Dunham teaches a system which including 'at least one of a local area network, an intranet, the Internet, a wide area network...' [fig 1,col 3, line 15-21]

Conclusion

The prior art made of record

a. US Patent No. 6714952

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

b. US Patent No. 5649205

c. US Patent No. 5729735

d. US Patent No. 5991772

e. US Patent No. 6088694

f. US Patent No. 6279011

g. US Patent No. 6615365

h. US Patent No. 6665689

i. US Patent No 6453325

j. US Patent No 6266679

k. US Patent No 6157931

l. WO 0019337

m. EMC Data Manager, EDM Symmetrix connect, A

description of EDM Symmetrix Connect Backup published on November 1998,pp 1-9.

n. EMC² White Paper, "Backup Solutions for the Celerra


File Server, Printed May 15, 2001, pages 1-8.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Srirama Channavajjala whose telephone number is (703) 308-8538. The examiner can normally be reached on Monday-Friday from 8:00 AM to 5:30 PM Eastern Time. The TC2100's Customer Service number is (703) 306-5631.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene, can be reached on (703) 305-9790. The fax phone numbers for the organization where the application or proceeding is assigned are as follows:

703/746-7238	(After Final Communication)
703/872-9306	(Official Communications)
703/746-7240	(For Status inquiries, draft communication)

Any inquiry of general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

sc 
Patent Examiner.
April 1, 2004